IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 2551 OF 2007

Shri Sunit Trimbakrao Nirbhavane. ... Applicant.

V/s.

The State of Maharashtra. ... Respondent.

Ms.S.A.Dhamale for the applicant.

Rajesh More, APP for the State.

Suresh Namdeo Aher, Advocate and Notary Public present in person.

CORAM: V.C.DAGA, J.

DATED: 3rd October, 2007.

P.C.:

. Heard learned counsel for the applicant and learned A.P.P. for the State. Perused application and other record.

2. By this application under section 438 of Code of Criminal Procedure, the applicant is seeking anticipatory bail in connection with C.R.No.105/2007 registered with P.I. Prohibition, Excise, Nashik Division for the offences punishable under sections 65(k), 81, 86, 108 of the Bombay Prohibition Act.

3. The case of the prosecution is that on 13th July, 2007 raid was conducted on Flat No.1, Ruturaj Apartments, Kshirsagar Colony, Hirawadi Road, Panchvati, Nasik. Illicit liquor from the possession of one Sagar Prakash Gavli was seized. He was arrested. Thereafter, he came to be released on bail on 14th July, 2007 by learned Judicial Magistrate, First Class, Nasik.

4. The present applicant having acquired knowledge of the aforesaid raid, reliably learned that, the police is likely to implicate him. Consequently, he moved an application for anticipatory bail before the learned Sessions Judge, Nasik being Criminal Misc. Application No.677/2007. The learned Sessions Judge, Nasik, after haring rival contentions, was pleased to reject application for anticipatory bail vide impugned order dated 24th July, 2007. The applicant has now invoked jurisdiction of this Court to seek anticipatory bail.

5. The learned counsel for the applicant contends that the applicant is not in possession of this flat No.1 located in Ruturaj Apartments, Kshirsagar Colony, Hirawadi Road, Panchvati, Nasik referred to hereinabove, since the same has been granted on leave

and licence basis to Sagar Prakash Gavli under the Leave and Licence Agreement dated 2nd December, 2006 for a period of 11 months from 2nd December, 2006. Zerox copy of the said agreement/ licence deed is produced on record.

6. The aforesaid leave and licence deed is executed on nonjudicial stamp paper which is not in the name of either of the parties. This Court entertained some doubt about genuineness of the said document. The nonjudicial stamp paper, as stated, is in the name of one Ashoksingh Gulzarsingh Girate, who is not party to the licence deed. The licence deed has been notarised on 2nd December, 2006 before one Shri Suresh Namdeo Aher, Advocate and Notary appointed by the Government of Maharashtra having registration No.753. The notarised document is affixed with seal, signature of the said Notary Public and endorsement bearing notarial serial No.3525/2006.

7. In order to verify the genuineness of the said document, Shri Aher, Advocate and Notary Public was summoned along with his register. Initially, some reluctance was shown by him to appear before this Court. Consequently, this Court was required to pass

as many as three orders directing Shri Aher, Notary Public to appear before this Court with the requisite register. Ultimately, he appeared and produced original register for the perusal of this Court. However, he could not explain discrepancies found and noted by this Court in para appearing hereinafter.

8. Having examined the entries in the said register at serial No.3525/2006, I found that the original entry 3525 was at page 150 of the register of Notary, 2006. This entry relates to the agreement dated 2nd December, 2006 executed by one Jayant Pundlik. The entry of the present document in question appears to have been inserted at the bottom of page 149 showing its notarisation on 2nd December, 2006. Having inserted the entry No.3525 at the bottom of page 149 of the register, the original entry No.3525, which was at page 150, was required to be changed. It appears to have been changed to 3526. With the result, there are two entries of 3526 in the register, whereas entry No.3527 is missing. It appears that Notary could not change subsequent serial numbers, though insertion of one document at the bottom of page 149 had a cascading effect. It, thus, prima facie appears that the leave licence agreement

in question has been antedated. Mr.S.N.Aher, Advocate and Notary Public has connived and helped the applicant in getting the document notarised.

9. Needless to mention that the Notary Public could not have registered this legal document, especially, when the nonjudicial stamp paper was not in the name of either of the parties. Secondly, the leave and licence deed has been scribed on insufficient stamp paper, which could not have been notarised by the Notary Public.

10. The applicant in normal course would have got anticipatory bail; had he not produced this manufactured antedated notarised document to seek bail in the present judicial proceedings. He tried to mislead this Court. In the circumstances, in my considered view, the applicant has not approached this Court with clean hands as such he is not entitled to anticipatory bail. The application is, thus, liable to be dismissed.

11. The Registrar General is directed to forward copy of this order to the Principal Secretary, Law and Judiciary Department, Government of Maharashtra to

make enquiry into the matter with regard to the conduct of the Notary Public referred to hereinabove, who is appointed by the Government of Maharashtra under its order dated 17th March, 1994 and take suitable action in accordance with law following principles of natural justice. Zerox copies of page Nos.149 and 150 of the register of Notary for the year 2006 be made part of this order and be remitted to the Chief Secretary; and the Principle Secretary, Law and Judiciary Department, Government of Maharashtra, Mantralaya, Mumbai-400 032. Both of them are expected to consider the feasibility of issuing directions to all the Notaries in the State not to notarise any document unless the stamp paper is purchased in the name of either of the parties to the document and proper stamp duty, in accordance with the provisions of the Bombay Stamp Act and/or Indian Stamp Act and/or any law for the time being in force, is paid by the executant. Suitable directions in this behalf would not only arrest evasion of stamp duty by the executants in connivance with the Notary Public but it will also arrest tendency of using old stamp papers purchased by third party and antedated notarisation thereof.

12. The original register of 2006 of the Notary Public Shri Aher, which is presently in the custody of this Court. It may be returned to him on his undertaking to preserve the same and produce it before the State Government or any other authority in the event of any enquiry pursuant to this order.

13. In the result, with the above observations, application for anticipatory bail is dismissed.

JUDGE